

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

Ramón Cintrón, Bar No. 200970
300 S. Spring Street, 12th Floor
Los Angeles CA 90013
Telephone: 213-346-6638
Facsimile: 213-897-9241

Attorneys for The California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and Licensing
Rights of

Gregory Lee Fox, d.b.a. Gregory Lee Fox
Insurance Services, and Gregory Lee Fox
Insurance Services, Inc.,

Respondents.

File Nos.: OC-73550-AP
OC-72456-AP
OAH No.: 2011040495

**SECOND AMENDED ACCUSATION and
REQUEST FOR ORDER**
(Pursuant to Insurance Code § 1748.5)

Introduction

1. Insurance Code §§ 1668 and 1668.5 list various grounds upon which the California Insurance Commissioner (“Commissioner”) may deny an application for an insurance license. Insurance Code § 1738 provides that the Commissioner may suspend or revoke any permanent license on any grounds upon which he may deny a license application pursuant to §1668, in the case of an individual, and pursuant to § 1668.5, in the case of an organization.

2. Pursuant to Insurance Code § 780, an insurer or officer or agent thereof, or an insurance broker or solicitor shall not cause or permit to be issued, circulated or used, any statement that is known, or should have been known, to be a misrepresentation of a policy of insurance, the benefits thereunder, and of future dividends or privileges thereunder.

///

1 3. Pursuant to Insurance Code § 781 (a), a person shall not make any statement that is
2 known, or should have been known, to be a misrepresentation (1) to any other person for the
3 purpose of inducing, or tending to induce, such other person either to take out a policy of
4 insurance, or to refuse to accept a policy issued upon an application therefor and instead take out
5 any policy in another insurer, or (2) to a policyholder in any insurer for the purpose of inducing or
6 tending to induce him or her to lapse, forfeit or surrender his or her insurance therein. In addition,
7 pursuant to § 781(b), a person shall not make any representation or comparison of insurers or
8 policies to an insured which is misleading, for the purpose of inducing or tending to induce him or
9 her to lapse, forfeit, change or surrender his or her insurance, whether on a temporary or
10 permanent plan.

11 4. Pursuant to Insurance Code § 782, any person who violates the provisions of
12 Insurance Code § 780, is punishable by a fine not to exceed twenty-five thousand dollars
13 (\$25,000) or in a case in which the loss of the victim exceeds ten thousand dollars (\$10,000), by a
14 fine up to three times the amount of the loss suffered by the victim, by imprisonment in a county
15 jail for a period not to exceed one year, or by both a fine and imprisonment. Restitution to the
16 victim ordered pursuant to § 1202.4 of the Penal Code shall be satisfied before any fine imposed
17 by this section is collected.

18 5. Pursuant to Insurance Code § 783, whenever any insurance agent, broker, or
19 solicitor knowingly violates any provisions of §§ 780 or 781, the commissioner may, after a
20 hearing, suspend the license of any such person for a period not exceeding three years.

21 6. Pursuant to Insurance Code § 785 (a), in addition to any other duty, whether
22 express or implied that may exist, all insurers, brokers, agents and other persons engaged in the
23 transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of
24 honesty, good faith, and fair dealing. Subsection 785(b) provides that the conduct of an insurer,
25 broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale
26 of a policy or certificate prior to the purchase is relevant to any action alleging a breach of duty of
27 honesty, good faith, and fair dealing.

28 7. Pursuant to Insurance Code § 787, any advertisement or other device designed to

1 produce leads based on a response from a potential insured which is directed towards persons age
2 65 or older shall prominently disclose that an agent may contact the applicant if that is the fact. An
3 agent who makes contact with a person because of acquiring that person's name from a lead-
4 generating device shall disclose that fact in the initial contact with the person. In addition, pursuant
5 to Code § 787(i), all advertisements used by agents, producers, brokers, solicitors, or other persons
6 for a policy of an insurer shall have written approval of the insurer before they may be used.
7 Pursuant to Code § 787(k), in addition to any other prohibition on untrue, deceptive, or misleading
8 advertisements, no advertisement for an event where insurance products will be offered for sale
9 may use the terms "seminar," "class," "informational meeting," or substantially equivalent terms to
10 characterize the purpose of the public gathering or event, unless it adds the words "and insurance
11 sales presentation" immediately following those terms in the same type size and font as those
12 terms.

13 8. Pursuant to Insurance Code § 789.10 (b), any person who meets with a senior in the
14 senior's home for the purpose of offering for sale, or generation of leads for the sale of life
15 insurance, including annuities, to senior insureds or prospective insureds, is required to deliver a
16 notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the
17 senior's home. If the senior has an existing insurance relationship with an agent and requests a
18 meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior
19 prior to the meeting. The notice shall be in substantially the following form, with the appropriate
20 information inserted, in 14-point type:

21 "(1) During this visit or a follow-up visit, you will be given a sales presentation on the
22 following [indicate all that apply]:

23 () Life insurance, including annuities.

24 () Other insurance products [specify]: _____.

25 (2) You have the right to have other persons present at the meeting, including family
26 members, financial advisors or attorneys.

27 (3) You have the right to end the meeting at any time.

28 (4) You have the right to contact the Department of Insurance for information, or to file a

1 complaint. [The notice shall include the consumer assistance telephone numbers at the department]

2 (5) The following individuals will be coming to your home: [list all attendees, and
3 insurance license information, if applicable]"

4 Subsection 789.10 (c) provides that upon contacting the senior in the senior's home, the
5 person shall, before making any statement other than a greeting, or asking the senior any other
6 questions, state that the purpose of the contact is to talk about insurance, or to gather information
7 for a follow-up visit to sell insurance, if that is the case, and state all of the following information:

8 (1) The name and titles of all persons arriving at the senior's home.

9 (2) The name of the insurer represented by the person, if known.

10 Subsection § 789.10 (e) provides that each person attending a meeting with a senior
11 shall provide the senior with a business card or other written identification stating the person's
12 name, business address, telephone number, and any insurance license number. The person(s)
13 attending a meeting with a senior shall end all discussions and leave the home of the senior
14 immediately after being asked to leave by the senior.

15 Subsection 789.10(f) provides that a person may not solicit a sale or order for the sale of
16 an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using
17 any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

18 9. Pursuant to Insurance Code § 790.02 no person shall engage in any trade practice
19 which is defined in Article 6.5, or as determined pursuant to Article 6.5 to be an unfair method of
20 competition or an unfair or deceptive act or practice in the business of insurance.

21 10. Pursuant to Insurance Code § 790.03 (b) an unfair method of competition and
22 unfair and deceptive acts or practices in the business of insurance, includes the making or
23 dissemination or causing to be made or disseminating before the public in any newspaper or other
24 publication, or in any advertizing device, *inter alia*, or in any other manner or means, any
25 statement with respect to the business of insurance or with respect to any person in the conduct of
26 his insurance business, and which is untrue, deceptive, or misleading, and is known, or which by
27 exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

28 11. Pursuant to Insurance Code § 790.035 any person who engages in any unfair

1 method of competition or any unfair or deceptive act or practice defined in § 790.03 is liable to the
2 state for a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars
3 (\$5,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed ten
4 thousand dollars (\$10,000) for each act or practice.

5 12. Pursuant to Insurance Code § 791.03 no insurance institution, agent or insurance
6 support-organization shall use or authorize the use of pretext interviews to obtain information in
7 connection with an insurance transaction¹. Code § 791.02(u) defines “Pretest interview” as “an
8 interview whereby a person, in an attempt to obtain information about a natural person, performs
9 one or more of the following acts: (1) Pretends to be someone he or she is not; (2) Pretends to
10 represent a person he or she is not in fact representing; (3) Misrepresents the true purpose of the
11 interview; and/or (4) Refuses to indentify himself or herself upon request.”

12 13. Pursuant to Insurance Code § 1724.5, every licensee shall file with the
13 commissioner, in writing, the true name of the individual or organization and all fictitious names
14 under which he or she conducts business, and after licensing shall file with the commissioner any
15 change in or discontinuance of such names. The commissioner may in writing disapprove the use
16 of any true or fictitious name (other than the bona fide natural name of an individual) on any of the
17 grounds specified in Insurance Code § 1724.5 (a)-(e).

18 14. Pursuant to Insurance Code § 1748.5, the commissioner may issue an order
19 removing a subject person from his or her office or employment with a production agency
20 prohibiting the subject person from participating in any manner in the conduct of the business of
21 insurer or production agency, except with the prior consent of the commissioner, if, after notice
22 and a hearing the commissioner finds that (a) that the subject person has engaged in misconduct
23 with respect to the business of insurance that has caused financial or other injury to any person, or
24 (b) the subject person has engaged in fraud, or willful acts or omissions involving dishonesty that
25

26 ¹ The section provides an exception permitting a pretext interview to obtain information from a person or institution
27 that does not have a generally or statutorily recognized privileged relationship with the person to whom the
28 information relates for the purpose of investigating a claim where there is a reasonable basis for suspecting criminal
activity, fraud, material misrepresentation or material nondisclosure in connection with a claim.

1 exposed a person to financial or other injury, and (3) the subject person's conduct or practice
2 demonstrates unfitness to continue as a subject person. A subject person means any person who
3 participates in any manner in the business of a production agency, or any person licensed as a
4 producer.

5 15. Pursuant to Code § 1668.5 (b), "controlling person" means a person who possesses,
6 directly or indirectly, the power to direct or cause the direction of the management and policies of
7 an organization licensed by the Department; control shall be presumed to exist if, *inter alia*, any
8 person, directly or indirectly, owns, controls more than 10 percent of the voting securities of the
9 organization.

10 16. An annuity is insurance contracts that guarantee periodic payments in exchange for
11 upfront payments called the "premium." Annuities typically offer tax-deferred growth of earnings
12 and may include a death benefit that will pay the insured's beneficiary a guaranteed minimum
13 amount, such as the insured's total purchase payments. There are generally three types of
14 annuities, fixed, variable, and equity indexed. In a fixed annuity, the insurance company
15 guarantees a minimum rate of interest. The insurance company also guarantees that the periodic
16 payments will be a guaranteed amount per dollar in your account. These periodic payments may
17 last for a definite period, such as 20 years, or an indefinite period, such as the insured's lifetime or
18 the lifetime of the insured and spouse. A variable annuity accumulates interest based on the
19 performance of subaccounts. An equity-indexed annuity earns interest based on a stock or equity-
20 based index. The annuity is "deferred" because they defer payments until the annuity "annuitizes,"
21 that is, results in a stream of payments at the end of the annuity contract period. Deferred annuities
22 typically impose surrender penalties if money is withdrawn prior to the end of a pre-determined
23 surrender period. The function of surrender penalties is to offset acquisition costs, principally the
24 commissions paid to selling agents, such as the respondents herein.

25 17. Insurance Code § 10509.8 (a) prohibits life agents or insurers from recommending
26 replacement of an existing annuity by use of materially inaccurate presentation/comparison of
27 premiums, benefits, dividends, values of existing contract or recommend that an insured 65 years
28 or older purchase an unnecessary replacement annuity. Subsection 10509.8 (a) defines

1 “unnecessary replacement” as a sale of an annuity to replace an existing one that required insured
2 to pay surrender charge for replaced annuity and new annuity does not confer a substantial
3 financial benefit over life of policy.

4 18. Insurance Code § 10509.9 provides that any agent or other person or entity engaged
5 in the business of insurance who commits a knowing violation of Article 8 of the Insurance Code,
6 including Code § 10509.8, is liable for an administrative penalty of no less than five thousand
7 (\$5,000) and no more than fifty thousand dollars (\$50,000) for each violation. In addition, the
8 commissioner may, after a hearing, suspend or revoke the license of any person or entity that
9 violates Article 8 of the Insurance Code.

10 **Parties**

11 19. The Commissioner brings this Accusation against respondents Gregory Lee Fox
12 and Gregory Lee Fox Insurance Services, Inc., in his official capacity pursuant to California
13 Insurance Code §§ 783, 1668 and 1738.

14 20. Respondent Gregory Lee Fox (“Fox”), doing business as Gregory Lee Fox
15 Insurance Services was, from October 30, 1968, and still is, the holder of a license issued by the
16 commissioner to transact insurance as a Life-Agent. Effective January 1, 2008, respondent Fox’s
17 Life Agent license was, by operation of law, converted into two separate license qualifications:
18 Life-Only Agent and Accident and Health Agent. All licenses held by respondent Fox are under
19 license number 0366571.

20 21. Respondent Gregory Lee Fox Insurance Services, Inc., (“GLFIS”) was from
21 December 28, 1983, and still is, the holder of a license issued by the commissioner to transact
22 insurance in the State of California as a Life-Agent. Effective January 1, 2008, respondent
23 GLFIS’s Life Agent license was, by operation of law, converted into two separate license
24 qualifications: Life-Only Agent and Accident and Health Agent. All licenses held by respondent
25 GLFIS are under license number 0658406.

26 **Allegations**

27 22. At all relevant times herein, GLFIS authorized Fox to transact insurance on its
28 behalf.

1 23. Pursuant to Insurance Code § 1668.5, and at all relevant time herein, Fox was and
2 is the controlling person of GLFIS, in that he possesses, directly or indirectly, the power to direct
3 or cause the direction of the management and policies of GLFIS, an organization licensed by the
4 Department; in addition, Fox directly or indirectly, owns, controls more than 10 percent of the
5 voting securities of GLFIS.

6 24. At all relevant times herein, Fox also was and is now conducting business as *G.L.F.*
7 *Financial Services*, a fictitious business name not approved or authorized by the commissioner.

8 25. At all relevant times herein, Fox and GLFIS were and are producers of insurance,
9 sold deferred annuities on behalf of insurers to senior citizens and are both responsible for the
10 conduct alleged herein.

11 26. At all relevant times herein, Fox and GLFIS received commissions or other
12 financial payments for sales of insurance products produced by each as alleged herein, including
13 commission payments for the production and sale of annuities.

14 27. Fox was the subject of a Department investigation that commenced in 2005 (“the
15 2005 investigation”), following the filing of separate complaints by Jim Weech, William Schaver,
16 Maria T. Shimohara, Lars Romberg, Douglas R. Cobb on behalf of Donna Elmquist, Douglas A.
17 Fisher, and Richard D. Von Luft, all of whom said that Fox made misrepresentations to them or to
18 their clients on insurance products, including annuities. After investigation, the Department
19 concluded that Fox had made misrepresentations on insurance products to seniors, used misleading
20 advertising material targeting seniors, failed to disclose license information in promotional flyers,
21 made inappropriate annuity sales (ill advised investments), and was churning² and twisting
22 policies. The Department closed its investigation in July 2006 by warning Fox that any future
23 violation of the Insurance Code with respect to the marketing of annuities to seniors would result
24 in disciplinary action against his license. Specifically, the Department warned Fox that continued
25 usage of misleading language like “*National Award Winning*” and “*Eliminate Fees*”, and the
26 omission of the phrase “*insurance sales presentation*”, in his business solicitation materials would

27 ² “Churning” and/or “twisting” is the practice of inducing a person to take out a policy of insurance, then encouraging
28 the person to allow the policy to lapse, or to forfeit, switch policies or surrender a the policy, resulting in large
commissions to the agent.

1 result in disciplinary action. Fox was given a copy of California Senate Bill 620, the bill enacting
2 Code § 789.10, which covers restrictions on life/annuity sales to seniors, including required
3 disclosures. Chief among the restrictions on the sale of annuities to seniors is the provision
4 requiring that an insurance producer, such as Fox, give written notice 24 hours before meeting
5 with a senior at a senior's home. The Department also warned Fox not to use the fictitious *G.L.F.*
6 *Financial Services* name in his insurance business unless he obtained the prior written approval of
7 the commissioner to use such fictitious name. Fox agreed to cooperate with the Department and
8 promised to comply with California insurance laws.

9 28. Despite the warning given to Fox upon the closing of the 2005 investigation, Fox
10 and GLFIS continue to use the unauthorized G.L.F. Financial Services business name. This is
11 evidenced by his flyer promoting a seminar to "*Learn How to Avoid the Most Common Mistakes*
12 *Retirees are Making*" at *Morton's The Steakhouse* in San Diego on January 21 and 28, 2009, at a
13 seminar on "*Safe Money Solutions*" presentation and free dinner at *Roy's Newport Beach* in
14 Newport Beach on April 21 and 28, 2010, and in a flyer for a "free dinner" to learn about "*Safe*
15 *Money Solutions* at *McCormicks & Schmicks* in Pasadena on July 13 and 20, 2011. In addition,
16 Fox continuous using misleading language in his business solicitations, such as "*national award*
17 *winner*, and "*Mr. Fox has over 43 years of experience in providing financial education and advice*,
18 in the flyer promoting a "*Safe Money Solutions*" presentation and free dinner at *McCormicks &*
19 *Schmicks* in Pasadena. Fox and GLFIS fail to state in his flyers that an insurance sales presentation
20 would be made at the "*free dinner*."

21 **Anonymous complaint**

22 29. Following the closing of the 2005 investigation, on or about December 31, 2006,
23 the California Department of Corporations forwarded to the Department a complaint against Fox
24 from an anonymous 79 year old, who claimed to have worked in the insurance/securities industry
25 for 31 years. The complainant said that he attended a seminar for seniors sponsored by Fox, and
26 that Fox told the seminar attendees that he provides his clients with full financial service; that Fox
27 tried to sell unsuitable *National Western Life Insurance Company* ("National") annuities to
28 seniors, including annuities with long maturity dates and high surrender charges. In addition, the

1 complainant said Fox was improperly holding himself out as an investment expert rather than an
2 insurance agent. The complainant says he received a telephone call from Fox's office after the
3 seminar requesting a meeting with him at his home, and that he agreed to the meeting. He says that
4 when Fox arrived at his home, Fox tried to get him to transfer *all* his assets into an index annuity.
5 The complainant says he asked Fox whether he was aware that by law Fox was required to tell him
6 in advance that he (Fox) would be attempting to sell him insurance at his home, and that Fox told
7 him that there was no such law. Along with the complaint, the complainant submitted copy of the
8 flyer and materials Fox distributed at the seminar.

9 30. Because Department records show that Fox is authorized to sell life insurance and
10 annuity products sold by *Sun Life Assurance Company of Canada (U.S.)* ("Sun Life"), and by
11 *Allianz Life Insurance Company of North America* ("Allianz"), the Department requested that the
12 companies provide information on the marketing of annuities by Fox, one of its agents.

13 **Sun Life Assurance Company of Canada (U.S.)**

14 31. Sun Life replied to the Department's on February 7, 2007, that it had terminated its
15 appointment with Fox effective July 31, 2006, and that while the appointment was in effect, it
16 authorized Fox to sell only its fixed annuity contracts in California. Sun Life also told the
17 Department that it had received no complaints against Fox; that Fox was required to use only Sun
18 Life approved material when representing its products, and that Sun Life did not monitor the
19 venues where its agents distribute information.

20 **Allianz Life Insurance Company of North America**

21 32. In its response to the Department's inquiry, Allianz informed the Department on
22 March 1, 2007, that it was not aware of any material distributed by Fox at seminars because Fox
23 had not submitted any materials to Allianz for pre-approval. Allianz informed the Department that
24 Fox, as a Allianz agent he was required to submit all advertising material to the Allianz
25 Compliance Department prior to use. In addition, Allianz informed the Department that it annually
26 sends Allianz Advertising Guidelines to its agents, and that Allianz's advertising approval
27 procedures is included in the Agent Agreement and Compliance Guide to Successful Business,
28 that is provided to all agents, including Fox. Allianz provided copy of its letter to Fox, dated

1 March 1, 2007, wherein Allianz reminded Fox that he must submit all advertising material to
2 Allianz for pre-approval, and that he is to stop dispensing tax advice since he lacked the proper
3 certification to give tax advice. Allianz reminded Fox that an agent's contract may be terminated
4 for repeated failure to comply with the terms of the Agent Agreement.

5 33. On January 15, 2009, the Department contacted Allianz to determine if Fox had
6 submitted advertising materials to Allianz for prior approval. Allianz responded that Fox had not
7 submitted any advertising or promotional material for pre-approval since Allianz warned Fox of
8 his contractual obligations by letter dated March 31, 2007.

9 **Midland National Life Insurance Company complaint**

10 34. On April 25, 2007 Kathy Doherty ("Doherty"), Assistant Vice President, *Midland*
11 *National Life Insurance Company* ("Midland") annuity division, filed a complaint against Fox with
12 the Department. She charged that Fox had engaged in fraudulent and unethical activity in his
13 dealings with Valerie Carter and James and Karen Henle, Midland policyholders in 2007. Doherty
14 charged Fox with altering transfer forms to affect transfers of 10% of the policyholders' funds in
15 their Midland annuity accounts to their National annuity accounts in 2007, without their knowledge.
16 Because of these unauthorized transfers, Midland placed a hold on all requests to transfer 10% of
17 funds in a policyholder's Midland annuity account to a National annuity account submitted to
18 Midland by Fox in 2007. Doherty reported that the company was reviewing all similar requests
19 submitted to the company by Fox to determine whether other policyholders had in fact authorize
20 authorized the transfer of funds to National. In March 2008, Doherty provided the Department with
21 the results of Midland's review. She reported that the following Fox policyholders reported that
22 they had not authorized Fox to affect a transfer of 10% of their funds in their Midland annuity to
23 their National annuity accounts in 2007: Martha Rocha de Zozaya, Robert Rietkerk, Zaida and
24 Herman Carsten. Zaida Carsten, Stephen Kim, John Piacentini, Esther Mayer, Barbara McKinney,
25 Marjorie MacNeil, Eugene Kim, Maria and Jose Almanza.

26 **Gibson and Valerie Carter**

27 35. A Department investigator interviewed Valerie Carter and her husband, Gibson
28 Carter. Valerie reported that they met Fox in 2002, at a free lunch invitation at the Holiday Inn at

1 Laguna Hills, California, where Fox conducted a financial planning seminar that focused on
2 deferred annuities. After the seminar, Valerie purchased a Midland annuity contract from Fox.
3 Valerie confirmed that she told Midland in 2007 that she had not authorized a 10 % penalty-free
4 withdrawal from the Midland account in 2007. She told the investigator that she had asked Fox
5 about the questionable 2007 transaction and that Fox told her that the forms she signed in 2006
6 were for two years³.

7 36. At the meeting with the Department investigator Valerie reviewed the 2006 and
8 2007 transfer forms Fox submitted to Midland on her behalf. Valerie immediately said that Fox
9 “whited out” the date on her valid 2006 signature and improperly wrote in “03-7-07” to affect the
10 transfer of funds from the Midland annuity to the National annuity in 2007.

11 **Karen and James Henle**

12 37. Karen and James Henle contacted Midland on April 4, 2007 after they received a
13 letter confirming their purported request to transfer funds from their Midland annuities account to a
14 National account in 2007. Karen Henle told the Midland representative that she did not authorize a
15 transfer to another insurance company in 2007, since it was like “starting all over again.”

16 38. In an interview with a Department investigator on February 15, 2008, Karen
17 said she contacted Midland in April 2007, and found out that Fox did not have the right to
18 withdraw and transfer funds from her annuity and that only she, as the policyholder, had that right.
19 On April 14, 2006, James Henle authorized the transfer of \$2,491.84 from Midland to National.
20 However, he said he did not authorize a transfer in 2007. Mr. and Mrs. Henle told the investigator
21 that Fox reproduced their 2006 signatures onto the bogus 2007 documents. Karen Henle stated that
22 Midland cancelled the unauthorized transfer of funds from their Midland accounts, and that she
23 and her husband were concerned that Fox was still capable of diverting additional unauthorized
24 funds from their accounts.

25 39. James Henle was born on February 15, 1944, and was 63 years in 2007. Karen was
26 born on March 25, 1945, and was 62 years old when Fox allegedly attempted the Midland annuity

27
28 ³ Midland, however, told the Department that it requires a separate set of completed paperwork for each withdrawal
and that it does not accept multiple year transfer requests.

1 transfer in 2007.

2 **Esther Mayer**

3 40. Esther Mayer ("Mayer") met Fox at a free lunch buffet held at the Holiday Inn in
4 Laguna Hills, California in 2002, where Fox made a sales presentation on Midland deferred
5 annuities. Mayer was impressed by Fox's offer of a free living- trust and by the 10 % Midland
6 signing bonus. Mayer recalls that after the luncheon, she met with Robert Douglass, an agent of
7 respondent GLFFS, who explained the Midland annuity. As a result, Mayer invested \$187,801 in a
8 Midland Flexible Premium Deferred Annuity, with a 5 % premium bonus, effective April 11,
9 2002.

10 41. Fox met with Mayer on May 22, 2006 and convinced her to transfer 10 % of her
11 funds in the Midland annuity to a new National annuity under the 10% penalty-free withdrawal
12 provisions of her Midland annuity. Mayer says that Fox told her Midland was no longer a good
13 company to invest in, and that she should move 10% of her Midland annuity to the more
14 investment "savvy" National annuity account. Mayer then signed forms authorizing the transfer of
15 10% from the Midland annuity to a National annuity in 2006. On May 11, 2007, Mayer received a
16 letter from Midland requesting she confirm her intent to transfer 10% of her annuity in 2007.
17 Mayer immediately contacted Midland and told the company that she did not sign any transfer or
18 withdrawal forms nor authorized a transfer of any annuity funds in 2007.

19 42. At a meeting with a Department investigator on June 16, 2008, Mayer reviewed a
20 copy of the document titled *Authorization to Transfer Funds to National Western Life* dated April
21 22, 2007. Mayer said she did not sign this authorization form or the Midland document titled
22 *Notice Regarding Replacement*, and that it looked to her as if Fox "whited out" the 2006 date on
23 the 2006 transfer form and wrote in the year 2007 to affect the transfer of funds from Midland to
24 National in 2007. At a subsequent interview with the Department investigator, Mayer told the
25 investigator that when Fox visited her residence on May 5, 2006, he did not provide her with
26 written notice of his intent to sell her insurance products before or during the visit.

27 43. Mayer also told the Department investigator that in retrospect, the Midland annuity
28 was not appropriate for her financial needs because she was "locked in" for many years at her

1 advanced age. The Midland annuity has a 14-year surrender period and matures on April 11,
2 2026. Mayer was born on February 3, 1926, and was 76 years old when she purchased the
3 Midland annuity in 2002.

4 **Marjorie MacNeil**

5 44. Marjorie MacNeil ("MacNeil") met Fox in 2003 at an investment seminar luncheon
6 hosted by Fox at a hotel ballroom where Fox discussed financial planning with an emphasis on
7 Midland deferred annuities. What interested her was that Fox said she could make more money
8 than in a traditional savings account by investing in the annuity. She recalls that Fox said that as
9 much as 8 % was a likely return on her annuity; with taxes deferred on gains; plus an 11 % signing
10 bonus; and that her principal investment was safe. Because of the presentation, MacNeil invested
11 \$243,749 in a Midland annuity, effective April 11, 2003.

12 45. In or about March 13, 2006, Fox sent MacNeil a letter saying that he no longer
13 sold Midland products because of "difficulties" he was having with the company. Fox cited a
14 survey that Midland sent out to policyholders, which, according to Fox contained mistakes and
15 wrong information, including problems with the information on the over 70 ½ age Individual
16 Retirement Account distributions. The letter ended by saying that Fox would continue to
17 "recommend adjustments from time to time to enhance your future values".

18 46. On April 20, 2006, Fox visited MacNeil at her residence and convinced her to
19 transfer 10% of the funds in her Midland annuity to a new annuity with National. MacNeil said
20 that the advice given by Fox was reasonable, so she signed a form authorizing a transfer of
21 \$29,673 from her Midland annuity to a National annuity in 2006.

22 47. About a year later, MacNeil received a letter from Fox dated April 23, 2007, stating
23 that he received and reviewed MacNeil's annual Midland annuity statement and that he "made a
24 partial adjustment last May with National Western. There is still room for another adjustment that
25 I will make for you."

26 48. On or about, May 11, 2007, MacNeil received a letter from Midland saying that the
27 company was aware of her intent to replace all or part of her Midland annuity contract in 2007.
28 MacNeil told the Midland representative that she did not sign any documents to transfer monies

1 from Midland in 2007 and that she did not meet with Fox at any time in 2007. MacNeil cancelled
2 the purported 2007 transfer of Midland funds to the National annuity.

3 49. On May 5, 2008, MacNeil invested \$27, 475 in a new Amerus Life Insurance
4 Company annuity, with Fox as the producer.

5 50. On or about October 2, 2008, a Department investigator met with MacNeil at her
6 residence regarding Fox. At that meeting, MacNeil reviewed copies of two documents that
7 Midland supplied the investigator. The first was a National “*Notice Regarding Replacement*” form
8 dated April 20, 2006. MacNeil stated that she signed this document with the intent to transfer
9 Midland monies to a new National annuity in 2006. The second document MacNeil reviewed was
10 a National “*Notice Regarding Replacement*” form allegedly signed by her on April 20, 2007.
11 MacNeil stated that she did not sign the 2007 form and that her signature and date on the 2006
12 form were both altered and copied onto the 2007 form.

13 51. MacNeil also told the investigator that Fox did not provide written notice of his
14 intent to sell insurance products before or during his visit to her residence on April 20, 2006. After
15 viewing the 2006 and 2007 “*Notice Regarding Replacement*” forms MacNeil told the investigator,
16 she did not believe the 2007 transfer attempt was simply a mistake or communication problem. She
17 added that she is no longer comfortable investing with Fox and will take her business to another
18 agent in the future. Her last contact with Fox was in May 2008.

19 52. The Midland annuity MacNeil purchased from Fox effective April 11, 2003, has a
20 14-year surrender period and matures on April 11, 2046. Mayer was born on September 28, 1930,
21 and was 73 years old when she purchased the Midland annuity in 2003.

22 **Stephen C. Kim**

23 53. Stephen C. Kim (“Kim”) met Fox in 2002 at an investment seminar sponsored by
24 Fox at a Best Western Hotel banquet room in Laguna Hills, California. On April 12, 2002, Kim
25 invested \$58, 072 in a Midland annuity recommended by Fox, and received a 5% premium bonus
26 of \$2,904. On May 31, 2006, Fox visited Kim at his Laguna Hills home and recommended that
27 Kim transfer 10% of his Midland annuity to a new deferred annuity with National. Kim agreed.
28 According to Kim, Fox told him that while the Midland annuity was still solid, he was now selling

1 a superior National product that had better customer service.

2 54. A Department investigator interviewed Kim at his residence on October 3, 2008.
3 Kim told the investigator that he had not heard from Fox since he agreed to purchase the National
4 annuity in May 2006. However, Kim said that a Midland representative had contacted him by
5 telephone in May of 2007 regarding a request of a second 10% penalty-free transfer of monies
6 from his Midland annuity to the National annuity in 2007. Kim said that he told the Midland
7 representative to he had not authorized Fox to make the transfer in 2007.

8 55. At the October 3, 2008 interview, Kim examined two National “*Notice Regarding*
9 *Replacement*” forms, one dated May 31, 2006, and the other dated April 18, 2007. Kim stated that
10 he signed the 2006 form, but that he did not sign the form dated April 18, 2007. Kim also said that
11 Fox did not provide written notice of his intent to sell him insurance products before or during his
12 visit on May 31, 2006. Kim said he no longer uses Fox for his investment planning; however, he
13 said that he is pleased with his existing deferred annuities contracts with Midland and National.

14 56. The Midland annuity Kim purchased from Fox effective April 12, 2002, has a 14-
15 year surrender period and matures on April 11, 2023. Kim was born on December 16, 1922, and
16 was 79 years old when he purchased the Midland annuity in 2002.

17 **John Piacentini**

18 57. John Piacentini (“Piacentini”) met Fox in 2003, after receiving an invitation from
19 Fox to a luncheon investment seminar at the Holiday Inn in Torrance, California. At the seminar,
20 Fox discussed financial planning with an emphasis on deferred annuities. On March 5, 2003,
21 Piacentini purchased a Midland annuity through Fox, with an initial premium investment of
22 \$100,000, and received an 11% premium bonus. Piacentini said that Fox explained that the annuity
23 allowed 10% withdrawal each year without surrender fees, and that if he died first, his wife would
24 receive ownership of the annuity. Piacentini made additional premium payments to the Midland
25 annuity from 2003 to 2006, raising the accumulated value of the annuity to over \$560,000. On
26 March 24, 2006, at a meeting at Piacentini’s residence Fox persuaded him to move 10% of his
27 money in the Midland annuity to a new National annuity. In mid March of 2007, Fox again
28 recommended that Piacentini move an additional 10% of the Midland funds to National.

1 58. At a meeting with a Department investigator on October 16, 2008, Piacentini
2 reviewed an *Authorization to Transfer Funds to National Western Life* form authorizing a transfer
3 of funds from the Midland annuity to a National annuity, dated March 24, 2007, and a *Notice*
4 *Regarding Replacement* form signed and dated March 16, 2007. Piacentini stated that he signed
5 these documents but “had not (finally) agreed” to the transfer from Midland to National in 2007.
6 Piacentini said he told the same to a Midland representative in a May 16, 2007 telephone call, and
7 that Midland cancelled the purported March 2007 transfer. Piacentini told the investigator that the
8 2007 transfer episode was the result of miscommunication between Fox, Midland, and himself.
9 However, he told the investigator that Fox failed to emphasize a few important provisions of the
10 Midland annuity. These included the “*Index Cap*” and the “*Participation Rate*”, under which
11 Midland reserved the right to change interest rate limits at any time during the life of the annuity.
12 This meant to him that if the Participation Rate moved from 100% to 75%, not all of his money
13 “was working for you”. In addition, Piacentini said that since the Index Cap was set at 10%, he
14 would not enjoy full return on his investment when returns exceeded the 10 % limit. Piacentini
15 told the investigator that he does not care much for the deferred annuity and would not invest with
16 Fox again.

17 59. The Midland annuity Fox sold to Piacentini in March 2003 has a 14-year surrender
18 period, and a maturity date of March 5, 2052. Piacentini was born on July 31, 1936, and was 67
19 years old when he purchased the Midland in 2003.

20 **Jose and Maria Almanza**

21 60. Jose Almanza (“Almanza”) and his wife, Maria met Fox in 2005 at an investment
22 seminar presented by Fox at the Holiday Inn in Torrance, California, where Fox discussed
23 financial planning with an emphasis on deferred annuities. Almanza and Maria expressed an
24 interest in deferred annuities because, as explained by Fox, the principal investment was safe,
25 taxes were deferred, and the insurance company offered a high sign up premium bonus. On
26 February 2, 2005, Fox met with Almanza and Maria at their Lomita, California home. Almanza
27 agreed to rollover his Fidelity IRA worth \$258,329 to a Midland annuity, and received a 10%
28 premium bonus of \$25,833.

1 61. On October 3, 2008, a Department investigator met with Almanza and Maria at
2 their residence to discuss their experience with Fox. Almanza told the investigator that Fox had
3 “disappeared” after 2005 because they could not contact him after they purchased the Midland
4 annuities. However, Almanza said that Fox visited them on May 1, 2006, and persuaded him to
5 transfer 10% of his Midland annuity to a new deferred annuity with National.

6 62. Almanza told the investigator that he agreed to the 2006 transfer of funds because
7 IRA rules required that he take a mandatory IRA distribution as he was over 70 years old.
8 Almanza said that he tried to contact Fox in late 2006 and early 2007, but Fox did not return his
9 telephone calls. However, he said Fox later contacted him and they arranged to meet with Maria at
10 their residence on April 7, 2007. Almanza said that the visit with Fox lasted about 5 minute, and
11 while there, Fox produced *Authorization to Transfer Funds* and *Notice Regarding Replacement*
12 forms for their signatures. Almanza said that he signed the forms but that Fox was in a rush and
13 did not explain the National annuity purchase adequately. Almanza said that on June 6, 2007, a
14 Midland representative called him and asked if he had authorized Fox to transfer 10% of his
15 Midland annuity to a National annuity on April 7, 2007. Almanza said he told the Midland
16 representative that Fox “fast-talked him” into the transaction.

17 63. At the meeting with the investigator, Almanza reviewed copies of the forms Fox
18 used to transfer monies from his Midland to the new National annuity in 2007. Almanza did not
19 dispute his signatures on the form dated April 7, 2007, but said that Fox did not provide him with
20 written notice of an insurance sales presentation at his home before, during, or after the February
21 10, 2005 sales meeting at his home, nor did he provide a notice before, during, or after the 2006 or
22 2007 home visits. Almanza told the investigator that he would not invest with Fox again because
23 Fox did not explained the details of the deferred annuities that he purchased, and because a
24 deferred annuity is not a good fit for him given the surrender requirements.

25 64. Maria told the investigator that she transferred \$46,425 from her investment in
26 Transamerica Life Insurance Company IRA to a Midland annuity, after Fox visited their residence
27 on March 21, 2005. Midland issued the annuity on April 18, 2005. On Fox’s next visit to the
28 Almanza’s residence on May 1, 2006, Fox persuaded Maria to transfer 10% of her Midland

1 annuity investments to a new National annuity,

2 65. According to Maria, the April 7, 2007 meeting with Fox lasted about 5 minutes,
3 and that, as with her husband, Fox had her sign the *Authorization to Transfer Funds and Notice*
4 *Regarding Replacement* forms to authorize a transfer of 10% of her Midland annuity to the
5 National annuity. Maria said that it all happened too fast, but that she and her husband did sign the
6 forms. Maria said that during the April 7, 2007 sales meeting, Fox seemed impatient and told her
7 and her husband that they were lucky he could fit them into his busy schedule. According to
8 Maria, Fox offered very little explanation for the transfers and downplayed the transactions as
9 routine and “not a big deal.” However, she stated that she liked the premium bonus that came with
10 of the new transfer to the National annuity, so she signed the forms.

11 66. On June 6, 2007, a Midland representative contacted Maria and Almanza and
12 asked her if she had authorized Fox to transfer 10% her Midland annuity to her National annuity.
13 Maria told the representative that Fox rushed her into the transaction and that she did not want to
14 make a transfer. As a result, Midland did not process the transfer to National.

15 67. Although Maria did not dispute her signatures on the April 7, 2007 transfer
16 documents, she told the investigator that her husband’s signature on the *Authorization to Transfer*
17 *Funds* form on his account “looks a little funny.” Maria recalled her first sales meeting with Fox
18 on March 21, 2005, and said that Fox did not provide her with written notice of an insurance sales
19 presentation 24 hours before this home visit. She added that Fox did not give her any written
20 notice of an insurance sales presentation either before or during the May 1, 2006 or on the May 1,
21 2007 meetings at her home.

22 68. Maria also told the investigator that she and her husband had considered paying the
23 surrender charges on her husband’s Midland annuity in order to have access to the \$250,000 they
24 had in the annuity account because the annual 10% penalty free withdrawal may not be enough to
25 supplement their retirement income. She said that she does not believe Fox explained the annuity
26 investment clearly. She also said that she was satisfied with her Midland annuity, but that she does
27 not believe Fox had their best interest in mind when he recommended that they invest their
28 \$250,000 in a long-term investment product. Maria told the investigator that she would not invest

1 with Fox again.

2 69. The Midland annuity Fox sold to Jose Almanza in March 2005 has a 14-year
3 surrender period, and a maturity date of March 7, 2052. Jose Almanza was born on November
4 16, 1936, and was 69 years old when he purchased Midland annuity through Fox in 2005.

5 70. The Midland annuity Maria purchased in April 2005 has a 14-year surrender period
6 and a maturity date of April 18, 2055. Maria was born on January 22, 1940, and was 65 years old
7 when he purchased Midland annuity through Fox in April 2005.

8 **Kwi-yung Jung complaint**

9 71. On September 25, 2006, Kwi-yung Jung (“Jung”) filed a complaint against Fox
10 with the Department. Jung said Fox misled him about the Midland Index Margins annuities and
11 failed to process his request to change the premium allocation on his annuity. Jung believes
12 Midland and Fox misrepresented the annuity by inadequately explaining the Index Margin “fees”,
13 and he complained that Midland and Fox should have either performed the change, or explained
14 why his requested changes were not beneficial for his investment.

15 72. Jung first met Fox in mid 2005 at a financial planning seminar sponsored by Fox at
16 an inn in Rowland Heights, in Los Angeles County. At the time, Jung maintained a deferred
17 annuity account with Fidelity Investments (Fidelity). The Fidelity deferred annuity charged
18 maintenance fees. Jung said that Fox told him that the Midland annuity did not charge
19 maintenance fees. On July 7, 2005, Jung agreed to purchase an annuity from Midland, with Fox as
20 the producer, and he authorized a rollover of approximately \$120,000 from his Fidelity account to
21 be allocated among three Midland National equity index annuities. Sometime later, Jung received
22 and examined his Midland annuity contracts closely and discovered that the Midland annuities
23 contained an index margin feature that acted like a maintenance fee. Jung said the Midland
24 annuities also had an interest percentage cap that would severely limit his gain when the market
25 rose.

26 73. On July 27, 2005, Jung wrote to Fox and Midland requesting a change in the
27 annuity premium allocation to avoid the index margin fees. Jung did not received confirmation
28 from Fox or from Midland confirming the requested changes. However, Jung told the investigator

1 that Fox said, “everything was OK,” which indicated to Jung that the premium allocation was
2 changed as per his request. However, on July 7, 2006, the anniversary of his contract, Jung
3 discovered that Midland had not re-allocated his premium as requested. Jung said he was
4 surprised, as he believed that Fox and or Midland should have told him that the reason they could
5 not re-allocate the premium. Convinced that Midland and/or Fox were in error, Jung sent a letter
6 dated July 12, 2006 to Fox and Midland to requesting that they correct the mistake and re-calculate
7 the gains on his investments. On July 31, 2006, Midland wrote Jung offering (1) refund of
8 premium paid without the 10% signing bonus and cancellation of contract; (2) recalculation of his
9 account based on his July 2005 request, including the Index Margin; or (3) to continue with the
10 annuities per his original contract. Jung rejected these proposals.

11 74. Jung was born on August 6, 1944 and was 61 years old when he purchased the
12 Midland annuity through Fox in 2005.

13 **William and Eileen Schaver complaint**

14 75. By letter dated July 18, 2008, William and Eileen Schaver (“Schaver”) filed a
15 complaint with the Department alleging that Midland and Fox provided them with an “unsuitable”
16 annuity contract that should not have been written.⁴ Schaver alleged that Midland and Fox treated
17 them “in an irresponsible and misdirected manner including lack of accurate and proper
18 instructions and information” on their annuity, and that they “tried to cancel (the annuity) but Mr.
19 Fox argued with us until it was too late. I tried having the 3 insurance companies cancel but they
20 too said it was too late.” “This cost us plenty in Death Benefits, Fee Penalties, Taxes, not to
21 mention a 15 year contract with an early withdrawal penalty starting at 22% for the first 4 years
22 then an additional 11 years. We may not make it.” “... My wife is now 84 and I am 89. We are
23 both in poor health.”

24 **Anna Marie Toth complaint**

25 76. On or about August 15, 2008 Anna Marie Toth (“Toth”) filed a complaint with the
26 Department alleging that National and Fox would not allow her to cancel an indexed annuity
27

28 ⁴ Schaver was one of the complainants in the 2005 investigation, and he filed another complaint with the Department in 2008, based on the same information given in the 2005 investigation.

1 purchased through Fox on May 25, 2006. By letter dated September 9, 2008, under letterhead of
2 *GLF Financial Services*, Fox denied the allegations, and said that Toth attended “one of our
3 meetings⁵ on April 25, 2006”, that he met with her at her request sometime thereafter⁶, and that
4 she asked his advice on where to invest \$24,130.29 so it would be safe, but allow withdrawals.
5 Fox asserted that he recommended the “Ultra Classic” investment because “it had liquidity
6 allowing for 10 to 50% withdrawal access over the first five years.” Fox reported that “on the
7 anniversary of May 25, 2007 and May 25, 2008” he reviewed the progress of the annuity with
8 Toth via telephone, and that in July 2008, Toth called him and told him that she wanted to
9 surrender her entire policy and that he explained the consequences of “that action”.

10 77. Toth told Department that when she met with Fox the terms “life insurance” and
11 “annuity” were never mentioned, and that Fox “promoted an investment opportunity with high
12 interest where I was assured a return on my investment sizeable enough to be worthwhile to invest
13 for 2-3 yrs. I am 83 years old. Why would I possibly purchase a life insurance policy that matures
14 in 2025”

15 78. In its response to inquiries from the Department, National provided a copy of letter
16 it received from Fox dated December 19, 2008.⁷ Attached to the letter, is copy of a flyer
17 advertizing a “*Free Dinner Seminar*”, at Morton’s Steakhouse on January 21, 2009. The flyer
18 states “*Fox has over 40 years of experience in providing financial education and advice.*” The
19 letter also included a copy of the annuity delivery receipt signed by Toth on June 6, 2006.

20 79. At the conclusion of its investigation, the Department informed Toth that it found
21 her complaint unjustified because her policy was delivered on June 6, 2006, and her first recorded
22 contact with National was on July 31, 2006, which was after the 30-day free look period for
23 requesting cancellation of the policy.

24 80. On December 26, 2008, the Department informed Fox that it had completed its
25 investigation of the Toth complaint, and that it found the complaint not justified. In addition, the
26 Department told Fox that he violated the Code by using an unauthorized fictitious business name,

27 ⁵ In the letter Fox also makes reference to “my seminars ...”

28 ⁶ The meeting apparently took place in May 2006.

⁷ This letter is also under the letterhead of *GLF Financial Services*.

1 by not having his license number listed in the *Morton* flyer that was not printed in the correct font
2 size, that he failed to state in the flyer that an agent may contact an applicant following the event,
3 by advertizing the event as a “seminar”, and by omitting the required “and insurance presentation”
4 language in the flyer.

5 81. The Department received copy of the National Policy Data Page on the Flexible
6 Premium Deferred Annuity for the investment made by Toth effective May 25, 2006, showing an
7 initial annuity premium of \$27, 130.29. Toth was 80 years old in May 2005, and the annuity has a
8 13-year surrender period and a maturity date of May 26, 2025.

9 **Termination of Midland agent contract**

10 82. Midland terminated its agent and agency contract and appointment with Fox
11 effective March 10, 2006, but granted him service rights for his active policyholders. His service
12 rights with Midland were terminated effective May 1, 2007.

13 **National Western Insurance Company**

14 83. On January 23, 2009, a Department investigator contacted Gina Miller, General
15 Counsel for National by telephone regarding advertising materials used by Fox. She told the
16 investigator that Fox had not submitted any advertising materials of any kind to National for prior
17 approval since his appointment with the company in February 2006.

18 **Aviva Life Insurance Company**

19 84. On January 23, 2009, a Department investigator contacted Emily Schallock,
20 Compliance Analyst with *Aviva Life Insurance Company*, regarding Fox. Ms. Schallock told the
21 investigator that Fox had not submitted any promotional materials to Aviva Life for prior approval
22 during the period March 1, 2007 through January 2009.

23 **Name Approval Request**

24 85. By application submitted to the Department on or about February 13, 2009,
25 Gregory Lee Fox filed an application for name change on behalf of “*Gregory Lee Fox Insurance*
26 *Svcs, Inc.*” The application requested a name change to “*Gregory Lee Fox Insurance Services and*
27 *Financial Svcs, Inc.*”

28 86. By letter dated March 4, 2009, the Department’s Administration and Licensing

Services Bureau informed Fox that the application to change the corporate name would not be processed until a copy of (1) the amended articles of incorporation, (2) the original license for correction, and (3) a list of the corporate officers are submitted with the application. In addition, the letter informed Fox that the abbreviation "Svcs" is not allowed. Fox did not respond to this letter.

Darlene A. Gerold

87. A Department Investigator met with Darlene Gerold (Gerold"), 78 years old, at her residence in Long Beach on September 27, 2011. Gerold's daughter, Linda Strickland, an attorney, was also present. The purpose of the meeting was to discuss Gerold's investment in annuities with broker Gregory Fox. Gerold provided files for investigator to copy as needed.

88. Gerold stated that when her husband died, she was left to manage their money with no investment experience. She received a mailer advertising an investment seminar run by Gregory Fox in 1999. She attended approximately seven of these seminars held at restaurants and hotels in the Long Beach area.

89. Gerold alleges that at the seminars, Fox repeatedly said that other customers her age were making lots of money buying annuities from him. He promoted the fixed annuities as a safe way to make her money grow. Gerold said that Fox downplayed the severity of the surrender charges if funds were withdrawn before the maturity date.

90. Gerold said her first annuity purchased was for around \$11,000 in 1999, when Fox visited her home. Gerold estimates that Fox visited her home to sell her annuities roughly 10 times from 1999-2010. She explained she has about \$1.6 million invested with Fox spread across nine different annuities.

91. Gerold recalls s that Fox wanted her to move monies from Midland National annuities to new National annuities. She recalls that Fox told her during a home visit that Midland was "no longer a good company" and was "having problems".

92. Gerold alleges that Fox gave "quick explanations" about why she should rollover the Midland monies to a new National annuity. Gerold told the investigator that Fox told her repeatedly to just "trust me", go ahead, and sign the documents needed to transfer the monies.

1 93. Gerold alleges that Fox would refer to her as “mom” and tell her personal stories
2 about his own family that had little to do with annuity investing. She feels Fox was manufacturing
3 a phony level of intimacy with her. Fox drove to one of the meetings in a new and expensive
4 Mercedes-Benz car that impressed both she and her neighbors. Gerold also claims that Fox
5 brought a 7 or 8 year old boy to one of the meetings as his son, which only served as a distraction
6 to her.

7 94. Gerold stated that she incurred surrender charges on some annuities she closed
8 because Fox promised that bonuses offered by the new annuities would cancel out the surrender
9 charges. Gerold said the bonuses were either smaller than promised, or not paid out at all
10 according to her statements.

11 95. Gerold told the investigator that her son, Mark Gerold, who has cerebral palsy, also
12 invested smaller sums of money with Fox, because Mark wanted to duplicate what his mom did
13 financially. Fox called Mark “son” when addressing him during the sales presentations. Although
14 Mark is younger in age, Gerold feels that with his disease he should not have his money tied up in
15 annuities. (Mark was unwilling to be interviewed.)

16 96. Although Gerold currently has \$150,000 to \$200,000 in liquid accounts, she does
17 not want over \$1 million tied up in annuities that will likely mature after she dies. She does not
18 want any more new annuities, and plans to leave the money in the current ones unless she has a
19 catastrophic illness or immediate major expense. She told the investigator that her Long Beach
20 residence no longer has a mortgage on it.

21 97. Gerold’s last transaction with Fox was as recent as 2010, when she moved monies
22 from a Midland product to a new Allianz Insurance annuity. Gerold said that in 2009 and 2010
23 alone, she invested a combined amount of \$480,000 in new annuities with Fox.

24 98. Gerold believes Fox took advantage of her lack of financial knowledge and
25 manipulated her emotionally on personal visits. She explained that Fox downplayed the surrender
26 charges and persuaded her to just trust him and not read the fine print carefully.

27 99. By letter dated May 27, 2011, Gerold’s daughter, Linda Strickland, and attorney in
28 Nevada, wrote to Fox on her mother’s behalf. In the letter, Ms. Strickland and Gerold told Fox that

1 Gerold "... no longer wishes to utilize your services and hereby terminate your retention." The
2 letter also requested that Fox return "my entire file, including all financial information, reports,
3 correspondence, and other documents which pertain to my personal finances and the Darlene A.
4 Gerold Revocable Trust ..." Fox did not respond to the May 27, 2011.

5 **CAUSE FOR DISCIPLINE**

6 100. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS
7 knowingly violated the provisions of Code §§ 780, 781, 10509.8 and article 8 of the Code because
8 they permitted to be issued, circulated or used, any statement they knew, or should have been
9 known, to be a misrepresentation of a policy of insurance and made representations or
10 comparisons of insurers or policies to insureds, including seniors, that were misleading for the
11 purpose of inducing or tending to induce them to replace or surrender their insurance or annuity,
12 and or the benefits hereunder, by churning and or twisting existing annuity and insurance policies,
13 by recommending unnecessary replacements annuities and/or recommending annuities of
14 questionable suitability to insureds 65 years old or older, and by attempting to make unauthorized
15 transfers of client funds from Midland to National. In addition, by such conduct respondents
16 violated the duty of honesty, good faith and fair dealing they owe to prospective insureds 65 years
17 of age or older imposed on them by Code § 785. All such conduct constitute grounds for the
18 commissioner to suspend their licenses for a period of three years, pursuant to Code §§ 783,
19 790.02, 790.03(b), 790.035, and 10509.9.

20 101. The facts alleged in ¶¶ 22 through 99 show that it would be against public policy to
21 permit respondents Fox and GLFIS to continue as licensees of the Department in that they
22 permitted to be issued, circulated or used, any statement they knew, or should have been known, to
23 be a misrepresentation of a policy of insurance, by making representations or comparisons of
24 insurers or policies to insureds, including seniors, that were misleading for the purpose of inducing
25 or tending to induce the insureds to replace or surrender their insurance, and or the benefits
26 hereunder, by churning and or twisting existing annuity and insurance policies, by recommending
27 unnecessary replacement of annuities and/or recommending annuities of questionable suitability to
28 insureds 65 years of age or older, and by attempting to make unauthorized transfers of client funds

1 from Midland to National.. In addition, by such conduct respondents violated the duty of honesty,
2 good faith and fair dealing they owe to prospective insureds 65 years of age or older imposed on
3 them by Code § 785. All such conduct constitute grounds for the commissioner to suspend or
4 revoke their licenses and licensing rights, pursuant to Code §§ 790.02, 790.03(b), 790.035,
5 1668(b), 1668.5(1), 1738, and 10509.9.

6 102. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS are not
7 of good business reputation in that they permitted to be issued, circulated or used, any statement
8 they knew, or should have been known, to be a misrepresentation of a policy of insurance and
9 made representations or comparisons of insurers or policies to insureds, including seniors, that
10 were misleading for the purpose of inducing or tending to induce the insureds to replace or
11 surrender their insurance, and or the benefits there under, by churning and or twisting existing
12 annuity and insurance policies, by recommending unnecessary replacement, by recommending
13 annuities of questionable suitability to insureds 65 years or older, and by attempting to make
14 unauthorized transfers of client funds from Midland to National.. In addition, by such conduct
15 respondents violated the duty of honesty, good faith and fair dealing they owe to prospective
16 insureds 65 years of age or older imposed on them by Code § 785. All such conduct constitute
17 grounds for the commissioner to suspend or revoke their licenses and licensing rights, pursuant to
18 Code §§ 1668(d), 1738, and 10509.9.

19 103. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS are
20 lacking in integrity, in that they permitted to be issued, circulated or used, any statement they
21 knew, or should have been known, to be a misrepresentation of a policy of insurance and made
22 representations or comparisons of insurers or policies to insureds, including seniors, that were
23 misleading for the purpose of inducing or tending to induce the insureds to replace or surrender
24 their insurance, and or the benefits hereunder, by churning and or twisting existing annuity and
25 insurance policies, by recommending unnecessary replacement of annuities and/or recommending
26 annuities of questionable suitability to insureds 65 years or older, and by attempting to make
27 unauthorized transfer of client funds from Midland to National.. In addition, by such conduct
28 respondents violated the duty of honesty, good faith and fair dealing they owe to prospective

1 insureds 65 years of age or older imposed on them by Code § 785. All such conduct constitute
2 grounds for the commissioner to impose an administrative penalty and to suspend or revoke their
3 licenses and licensing rights, pursuant to Code §§ 790.02, 790.03(b), 790.035, 1668(e), 1738, and
4 10509.9.

5 104. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS have
6 engaged and previously engaged in fraudulent practices or acts or have conducted business in a
7 dishonest manner, in that they permitted to be issued, circulated or used, any statement they knew,
8 or should have been known, to be a misrepresentation of a policy of insurance and made
9 representations or comparisons of insurers or policies to insureds, including seniors, that were
10 misleading for the purpose of inducing or tending to induce them to replace or surrender their
11 insurance, churning and or twisting existing annuity and insurance policies, by recommending
12 unnecessary replacement of annuities and or recommending annuities of questionable suitability
13 to insureds 65 years or older, by attempting to make unauthorized transfer of client funds from
14 Midland to National, and by failing to disclose to clients and potential clients the true purpose of
15 the “*Free Dinner Seminars*,” and true purpose of their visits to seniors at their the residence, as
16 required by Code § 787. In addition, by such conduct respondents violated the duty of honesty,
17 good faith and fair dealing they owe to prospective insureds 65 years of age or older imposed on
18 them by Code § 785. All such conduct constitute grounds for the commissioner to impose an
19 administrative penalty and to suspend or revoke her licenses and licensing rights, pursuant to Code
20 §§ 790.02, 790.03(b), 790.035, 1668(i), 1668.5(1), 1738 and 10509.9.

21 105. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS have
22 shown incompetency or untrustworthiness in the conduct of any business, or have by commission
23 of a wrongful act or practice in the course of any business exposed the public or those dealing with
24 them, including seniors, to the danger of a loss in that they engaged in the practice of churning and
25 or twisting existing annuity and insurance policies, by recommending unnecessary replacement of
26 annuities and or by recommending annuities of questionable suitability to insureds 65 years or
27 older, and by their failure to provide seniors, when visiting their residences, with, *inter alia*, the
28 notices required by Code § 789.10, including failure to give the required written notice 24 hours

1 prior to the visit to the residence of a senior, by failing to tell seniors that the true intent of the
2 visits to their residence was to sell of insurance products, and by attempting to make unauthorized
3 transfer of client's funds from Midland to National. In addition, by such conduct respondents
4 violated the duty of honesty, good faith and fair dealing they owe to prospective insureds 65 years
5 of age or older imposed on them by Code § 785. All such conduct constitutes grounds for the
6 commissioner to impose a penalty on them and to suspend or revoke their licenses and licensing
7 rights, pursuant to Code §§ 790.02, 790.03(b), 790.035, 1668(j), 1668.5(2), 1738 and 10509.9.

8 106. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS failed
9 to perform a duty expressly enjoined upon them by the Insurance Code §§ 780, 781, 782, 783, 785,
10 787, 789.10, and 1724.5 including the duty of honesty, good faith and fair dealing they owe to
11 prospective insureds 65 years of age or older, and by their willful disregard and failure to comply
12 with the express warning given to them by the Department at the close of the 2005 investigation,
13 where they were warned they must comply with the requirements of Code § 789.10, particularly,
14 *inter alia*, the requirement that they give prior written notice to seniors when meeting at their
15 residence, by failing to tell seniors the true purpose of the meeting at their home was to talk about
16 insurance, or to gather information for a follow-up visit to sell insurance, and by their continued
17 use of the unauthorized *G.L.F. Financial Services* business name. All such failures constitute
18 grounds for the commissioner to suspend or revoke their licenses and licensing rights, pursuant to
19 Code §§ 1668(l), 1668.5(4) and 1738.

20 107. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS have
21 engaged in misconduct with respect to the business of insurance that has caused financial or other
22 injury to another person, including seniors; that they have knowingly engaged in fraud, or willful
23 acts or omissions involving dishonesty that exposed persons, including seniors to financial or other
24 injury, by their practice of churning and or twisting existing annuity and insurance policies; by
25 recommending unnecessary annuities and or recommending annuities of questionable suitability to
26 seniors, by attempting to make unauthorized transfer of client's funds from Midland to National,
27 and by their violation of the duty of honesty, good faith and fair dealing they owe to prospective
28 insureds 65 years of age or older, as imposed on them by Code § 785. All such conduct or

1 practices demonstrate respondent's unfitness to continue as licensees of the Department, and
2 constitute grounds for the commissioner to issue, after a hearing, an order that they cease and
3 desist from further participation in the business of insurance in any capacity, without the prior
4 written consent of the commissioner, pursuant to Code § 1748.5.

5 108. The facts alleged in ¶¶ 22 through 99 show that respondents Fox and GLFIS
6 engaged in a trade practice determined to be an unfair method of competition or an unfair or
7 deceptive act or practice in the business of insurance under § 790.03(b). This includes the making
8 or dissemination or causing to be made or disseminating before the public in any newspaper or
9 other publication, or in any advertizing device, *inter alia*, or in any other manner or means,
10 statements with respect to the business of insurance by Midland, which was untrue, deceptive, or
11 misleading, and was known to, or which by exercise of reasonable care should have been known,
12 to respondents to be untrue, deceptive, or misleading. In addition, respondents attempted to make
13 unauthorized transfer of clients' funds from Midland to National. All such conduct and acts by
14 respondents violated the duty of honesty, good faith and fair dealing they owe to prospective
15 insureds 65 years of age or older imposed on them by Code § 785. All such conduct constitute
16 grounds for the commissioner to impose a civil penalty and to suspend or revoke their licenses and
17 licensing rights, pursuant to Code §§ 790.02, 790.03(b), 790.035, 1668(e), 1738, and 10509.9.

18 **PETITION FOR DISCIPLINE**

19 The Department prays for issuance of an Order after hearing that:

- 20 1. Suspends the licenses of Fox and GLFIS for a three year period, pursuant to Code
21 §§ 783, 1738 and 10509.9.
- 22 2. Revokes all licenses and licensing rights of respondents Fox and GLFIS, pursuant
23 to Code §§ 1668, 1668.5, 1738 and 10509.9.
- 24 3. Imposes an administrative penalty of no less than five thousand dollars (\$5,000)
25 and no more than fifty thousand dollars (\$50,000) for each knowing violation of article 8 of the
26 Code.
- 27 4. Imposes, pursuant to Code § 790.035 a civil penalty, not to exceed five thousand
28 dollars (\$5,000) for each act or practice determined to be an unfair method of competition or

1 unfair or deceptive act or practice in the business of insurance, or, if the act or practice was willful,
2 a civil penalty not to exceed ten thousand dollars (\$10,000) for each act or practice.

3 5. Orders, pursuant to Code § 1748.5, respondents Fox and GLFIS cease and desist
4 from further participation in the insurance industry in any capacity until expressly permitted to
5 resume participation in the insurance industry by prior consent of the commissioner.

6 The prohibition shall include, but is not limited to:

7 a. Soliciting, negotiating, executing, delivering, effecting, arranging, or
8 otherwise transacting insurance in any manner in exchange for compensation of any kind.
9 “Soliciting” means making any oral or written statement with the intention or possible
10 effect of provoking a person’s interest in purchasing an insurance product. “Negotiating”
11 means having any discussion with the objective of arranging the sale of insurance for
12 compensation of any kind.

13 b. Having any contact whatsoever with any other person, for the purpose of
14 soliciting, negotiating, arranging, discussing, or otherwise transacting insurance in any
15 manner. This subdivision is inapplicable to transactions whereby the respondents are
16 strictly purchasers of insurance.

17 c. Advertising, or participating in advertising, by newspaper, telephone book
18 or listing, mail, handout, business card, or by any other written or printed presentation, or
19 in any other manner or means whatsoever, whether personally or through others, which
20 implies that respondent is licensed or is engaged in the business or soliciting, negotiating,
21 executing, delivering, or furnishing insurance in any manner.

22 d. Acting as an owner, partner, officer, director, shareholder, stockholder, or
23 employee, or having any interest in any insurance business.

24 e. Acting as an office manager, agent, broker, general agent, managing general
25 agent, underwriter, consultant, or otherwise supervising, controlling, advising, or
26 participating in the conduct of an insurance business in any capacity.

27 f. Receiving money, commission, fee, rebate, payment, remuneration, or any
28 other valuable consideration whatsoever, in connection with any insurance transaction, for

1 work for, advice to, or consultation with any insurance business.

2 g. Acting as an employee, agent, broker, solicitor, office clerk, secretary,
3 consultant, advisor, or otherwise providing any aid or assistance whatsoever, whether on a
4 permanent, full time, temporary, or limited basis, for any insurance licensee or business.

5 h. Handling, controlling, delivering, transporting, distributing, storing,
6 maintaining, creating, completing, executing, or having access to any blank insurance
7 binder, insurance identification card, or certificate of insurance.

8 i. Collecting, receiving, requesting, maintaining, handling, distributing,
9 refunding, returning, remitting, assigning, effecting, having access to, controlling, or
10 otherwise having anything to do with any money that has anything to do with an insurance
11 business.

12 6. Grants such other equitable relief, including restitution, as may be just and proper
13 to redress respondents' violations as set forth herein above.

14 Dated: September 29, 2011

15 CALIFORNIA DEPARTMENT OF INSURANCE

16
17
18 By _____
19 Ramón Cintrón
20 Senior Staff Counsel
21
22
23
24
25
26
27
28